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Pro se ASSIGNEE
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U.S. BANKRUPTCY
DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re: DULARA AUTOMOTIVE GROUP, LLC, EIN: 45-2577059 Debtor.	Case No.: 2:14-bk-07683-MCW Chapter 11 **MOTION TO CONFIRM SETTLEMENT AGREEMENT PURSUANT TO *Fed.R.Bankr.P.* 9019** **Hearing Date: TBD**

Grant H. Goodman, as ASSIGNEE of all right, title, and interest in MOTHERSHEAD ('ASSIGNOR') claims, causes of action, and defenses, as a party-in-interest, creditor, and claimant in the above-captioned case (the "Chapter 11 Case"), moves this Court for an Order approving the open court settlement agreement, authorized and agreed to in open court on July 20, 2015, entered into by the DIP, Aslam Dulara, its counsel, Olga Zlotnik, ASSIGNEE GOODMAN, and

ASSIGNOR, Karen Mothershead. A hearing is also requested. At the Court's request, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, expedited approval of the SETTLEMENT (the "Settlement") is requested. The terms of the Settlement are set forth in the true and correct copy of the Settlement Agreement and Mutual Release (the "Settlement Agreement") attached and by this reference incorporated herein. In support of this Motion, GRANT H. GOODMAN, represents as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

2. On May 20, 2014 (the "Petition Date"), the Debtor filed its voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code.

3. The Debtor owns and operates a used car sales and repair business (the "Business"). The Debtor is continuing to operate the Business as a debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108. No trustee, examiner or official committee of creditors has been appointed as of the date of this motion.

4. As of July 20, 2015, the Debtor is indebted to GOODMAN under the Settlement in an amount of $172,000.00.

5. By July 22, 2015, Mothershead made unilateral demands for material term changes of the open-court agreement. Payments were altered, additional funds were demanded, and 'interest rate' increases were included, along with a host of demands which were never approved, discussed by the parties in settlement, or placed before the court. [Goodman will place under seal all or substantially all email transmissions between the parties, or at least those transmissions which were not *blind copied* by Ms. Mothershead, and of which Goodman has no knowledge.] Those materials retain a constant theme which seek to repudiate Mothershead's signed, dated, now filed and sworn before this court, and in open court, Assignment Contracts to Goodman, of all right, title, and interest in the proceedings.

6. At bottom, Ms. Mothershead has no position in this litigation *vis-a-vis* the Assignments—as a creditor—as a party-in-interest—or as an administrative priority claimant. Ms. Mothershead has, and had, assigned all interests to Goodman. Ms. Mothershead is not necessary for a just adjudication nor may she be joined under *Fed.R.Bankr.P.* 7017-7019-7020-7024, those 'rights' having been assigned as well. Ms. Mothershead threatened the adverse attorney, Ms. Zlotnik, by apparently reporting Ms. Zlotnik to the State Bar of Arizona for *disclosing to Goodman*, as holder of all right, title, and interest in the litigation, *that Ms. Mothershead had retained a third and fourth lawyer* in the case over the last few months from Arboleda to Harnish, and last week, to Ivy Kushner, 'retained' post-open-court

approved settlement. Kushner quit yesterday, as with Harnish and Arboleda before her. The *Sprint* case, cited to this court in oral argument and cited in the Assignments, requires that ALL right, title, and interest in the matter or matters be assigned by the assignor, leaving nothing for the assignor to debate, as here—other than a post-settlement or trial split of the proceeds, for which the assignee is accountable. This case classically illustrates why the assignor may not reserve for itself a position in the litigation which so multiplies the proceedings as to defeat the assignment itself. The U.S. Supreme Court single voice requirement for litigating, or settling the claim, accords finality to the litigation while barring a multiplicity of suits at odds with the assignment itself.

7. Now, counsel for the Debtor has understandably quit given the drama. The Settlement agreed to in open court, even by Mothershead—several times—is valid and enforceable. Mothershead was not allowed a pulpit from which to threaten the parties or their counsel, and obstruct the proceedings. Mothershead was warned numerous times, under the assignment, to refrain from obstructing the settlement which was in everyone's best interest, and which would not require that the proceedings be overturned through *Fed.R.Bankr.P.* 9024 (*Fed.R.Civ.P.* 60(b)(4) and 60(d)(1)(2)(3), or through 18 U.S.C. § 152(1)(2)(3)(4)(5)(6)(8)), or through Goodman's pretrial statement incorporated here. At this point most attorneys would withdraw and try to minimize the sanctions imposed by the court. Goodman does

not have that as an option since he owns the claims and is not acting as a representative on Mothershead's behalf.[1] The court is requested to employ the Assignments to temper Ms. Motherhead's irregular and legally indefensible behavior. The court is requested to entertain an award of not less than $10,000.00 against Ms. Mothershead's 70% for needlessly protracting the litigation under 28 U.S.C. § 1927, and for Mothershead's recklessly threatening the assignee, and all other parties, including her own past counsel, Arboleda and Harnish, with 'reports' to the State Bar which threats include Debtor's former counsel, Ms. Zlotnik, through the Federal and State analogs of Rule 11, and the Court's inherent authority to restrain and mute such ill-conceived theatrics.

8. All parties and interested parties effected had agreed in open court to the material terms of the Settlement of July 20, 2015, agreeing to forego a trial on the merits in exchange for the Settlement as stated on the record. The Settlement

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[1] Even were Goodman still licensed, the Assignments were made individually to Goodman from individual Mothershead, and not in a representative capacity—there is practically, and ethically, no 'attorney-client' privilege accorded the assignments. Ms. Mothershead was repeatedly instructed on this point many times over the last eighteen months. Apparently Ms. Mothershead waived whatever claims to confidentiality existed by sending and delivering a series of emails to the court (promised for republishing under seal here) and other communications from Assignee-Goodman. Those communications are evidence that the integrity of the assignments will be strictly enforced, at least, by Goodman as the assignment holder.

resolves disputes between them in a way that will facilitate the Debtor's Chapter 11 Case, and reduce unnecessary costs and delays.

9. To that end, the Debtor, its counsel, Goodman as Assignee, and Mothershead as the Assignor, agreed to settle and compromise all issues and claims against each other arising out of, or that could have arisen out of, the Agreement and/or the Chapter 11 Case.

10. Debtor shall pay a scheduled total of $172,000.00 to Grant H. Goodman on the dates specified in the appended Agreement which will satisfy and settle the obligation of the Debtor under the Agreement. ***At the Court's direction Debtor shall cut two cashiered funds checks at each remittance, 30% to Goodman, and 70% to Mothershead.***

11. The proposed terms of the Settlement are set forth in the Agreement attached.

III. LEGAL ARGUMENT

A. The Settlement is Fair and in the Best Interests of the Debtor's Estate and Should Be Authorized Pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure.

The requested relief is authorized by Rule 9019(a) of the Federal Rules of Bankruptcy Procedure. "Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustee as provided in Rule 2002 and to any other entity as the court may direct.

"The bankruptcy court has great latitude in approving compromise agreements." *In re Woodson,* 839 F.2d 610, 620 (9th Cir. 1988). The decision to approve a compromise is within a court's discretion, provided that the result is "fair and equitable." *See In re Woodson,* 839 F.2d at 620; *In re A&C Properties,* 784 F.2d 1377, 1381 (9th Cir. 1986).

In making this determination, a court must consider the following four factors:

> (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views . . . *In re A&C Properties*, 784 F.2d at 138 (quoting *In re Flight Transp. Corp. Sec. Litig.,* 730 F.2d 1128, 1135 (8th Cir. 1984)).

Evaluating an open court prior settlement "does not require the bankruptcy judge to hold a full evidentiary hearing or a 'mini-trial' before a compromise can be approved." 10 COLLIER ON BANKRUPTCY ¶ 9019.02 at 9019-5 (15th ed. 2002). Were that required, "there would be no point in compromising; the parties might as well go ahead and try the case." *Id.* Instead, a court is obliged to "canvass the issues and see whether the settlement falls below the lowest point in the range of reasonableness." *Id.* Neither Mothershead, Goodman, nor the Debtor or its counsel opposed the settlement terms in open court under direct questioning by this court. Rather, all parties to the Agreement voiced approval and consent to the material terms as published herein, on July 20, 2015.

The Agreement, achieves a result that is in the best interest of the Debtor and its estate. The Settlement avoids continuing costs and delay, will enhance the prospects for success in this Chapter 11 Case, reduces the overall administrative costs associated with this case and likely represents the best negotiated outcome possible.

IV. NOTICES

The DIP, and its counsel, will provide notice of this Motion pursuant to Rule 2002(a)(3) of the Federal Rules of Bankruptcy Procedure or as otherwise directed by this Court.

V. CONCLUSION

For the foregoing reasons, it is respectfully requested that this Court enter an order approving the Open-Court Settlement of July 20, 2015, as it is in the best interests of the Debtor and its estate.

RESPECTFULLY SUBMITTED this 29th day of July, 2015.

/s/Grant H. Goodman 7.28.2015

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Pro se ASSIGNEE
Party-in-interest/Creditor/Claimant

CERTIFICATE OF SERVICE

COPY of the foregoing noticed through the bankruptcy case to those receiving notice of the Docket filings, and/or emailed, with ***actual and constructive notice to Mothershead***, this 29th day of July, 2015.

COPY of the foregoing transmitted *via* method indicated (in bold) this 29th day of July, 2015 to the following:

Office of the U.S. Trustee
230 N. First Ave, Ste., 204
Phoenix, Arizona 85003
Edward.K.Bernatavicius@usdoj.gov

Steve Jerome
Snell & Wilmer L.L.P.
One Arizona Center
Phoenix, Arizona 85004-2202
sjerome@swlaw.com

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Phoenix, AZ 85007
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/s/GHG 7.29.2015

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

I. PARTIES

The parties to this Settlement Agreement and Mutual Release (the "Agreement") are as follows:

Karen Mothershead ("Mothershead");

Grant Goodman, as an assignee of Mothershead ("Goodman"); and

Dulara Automotive Group, LLC dba Big Bell Road Auto Superstore ("DAG").

Mothershead, Goodman, and DAG are collectively referred to hereinafter as the "Settling Parties." The Agreement is effective on the date that it is executed by the Settling Parties.

II. RECITALS

A. On or about May 20, 2014, DAG filed a voluntary petition for relief under Chapter 11, Title 11 United States Code in the District of Arizona Case No. 2:14-bk-07683-MCW (the "Bankruptcy Case").

B. On or about November 5, 2014, Mothershead and DAG entered into that certain Partnership Agreement ("Partnership Agreement"), where Mothershead invested $200,000 to purchase vehicles for sale.

C. As of July 20, 2015, DAG is indebted to assignee, under the Partnership Agreement.

D. Subject to the conditions, covenants, and obligations contained herein, the Settling Parties now wish to settle and compromise all issues and claims against each other arising out of or that could have arisen out of the Partnership Agreement and/or Bankruptcy Case.

III. COVENANTS

Based upon the foregoing and following representations, and in consideration of the covenants set forth in the Agreement, and for other valuable consideration, the Settling Parties agree as follows:

Incorporation of Recitals. The above and foregoing recitals are incorporated herein and made a part of this Agreement. The Settling Parties represent that the foregoing recitals are true and correct.

Court Approval. Upon the execution of this Agreement, DAG shall use its best efforts to promptly seek and obtain Court Approval of this Agreement.

Settlement.

Without any admission as to liability, DAG will pay Goodman the total amount of $172,000.00 ("Settlement Amount") as follows: (i) $25,000 upon signature or court enforcement order; (ii) $25,000 on or before August 20, 2015; (iii) $80,000 on or before December 15, 2015; (iv) $20,000 on or before February 15, 2016, and (v) $22,000 on or before April 15, 2016. All payments shall be remitted to "Grant H. Goodman" in cashiered funds, at the Zlotnik Law Office, due by 2:00 p.m. on the described due dates. If Court approved, two cashiered fund amounts, 30% to Goodman and 70% to Mothershead in accordance with the Assignments, will be paid in satisfaction of the debt at each remittance, minus any sanctions, cost and expense awarded in favor of Assignee Goodman before the first scheduled payment. These amounts will be deducted from Ms. Mothershead's 70% until paid in full.

On the date of signature or court enforcement order, Mothershead shall deliver to DAG a 2007 black Chrysler 300.

Failure to pay when due shall constitute a default with all unpaid sums then due accelerated for payment to the default date. A default shall trigger all collection and damage remedies in both State and Federal forums. The settlement amounts, paid or unpaid, shall not be discharged, dismissed, impaired, or compromised through bankruptcy. In the event of default, all remedies in State or Federal forums are preserved including, but not limited to contract damages, punitive or exemplary damages, provisional remedies including attachment and garnishment, treble damages under Federal RICO 18 U.S.C. §§ 1961-1968, et seq., damage under 42 U.S.C. §§ 1981-1983-1985, et seq., damage for tortious interference with expectancy, damage related to bad faith and fraudulent inducement, damage related to fraudulent conduct, and damage for conversion along with remedies for a constructive trust. And any obstruction of the settlement by the Assignor shall form the basis for a similar action or cause of action against the Assignor in protection of the property interests accorded the Assignee. The Assignment shall also be deemed a protectable property interest under U.S. Supreme Court precedent.

Release and Discharge.

In consideration of the information set forth above and the Settling Parties' mutual covenants and promises, the Settling Parties agree as follows:

Except for the performance of the obligations contained in this Agreement, Mothershead, in accordance with the Assignments, and any heirs, agents, and assigns forever release and covenant not to sue DAG, and/or any of its past, present, and future, principals, shareholders, investors, members, officers, agents, brokers, employees, employers, trustees, representatives, attorneys, beneficiaries, servants, directors, partners, independent contractors, parent and subsidiary corporations, related entities, affiliate corporations or companies, executors, successors, predecessors-in-interest, administrators, and assigns, and all persons or entities claiming by, through, or under it, on any and all claims, actions, causes of action, suits, debts, sums of money, losses, interests, costs, receivables, expenses, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, direct or indirect, foreseen or unforeseen, contingent or fixed, liquidated or unliquidated, that Mothershead had, now has, or may claim to have had as of the date of execution of this Agreement, including, but not limited to, all claims and complaints arising out of or in any way related to the facts and circumstances in the Partnership Agreement and/or Bankruptcy Case. The foregoing release and covenant does not include any legal action necessary to enforce or protect the rights and duties created by this Agreement.

Except for the performance of the obligations contained in this Agreement, Goodman and any heirs, agents, and assigns forever release and covenant not to sue DAG, and/or any of its past, present, and future, principals, shareholders, investors, members, officers, agents, brokers, employees, employers, trustees, representatives, attorneys, beneficiaries, servants, directors, partners, independent contractors, parent and subsidiary corporations, related entities, affiliate corporations or companies, executors, successors, predecessors-in-interest, administrators, and assigns, and all persons or entities claiming by, through, or under it, on any or all claims, actions, causes of action, suits, debts, sums of money, losses, interests, costs, receivables, expenses, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, direct or indirect, foreseen or unforeseen, contingent or fixed, liquidated or unliquidated, that Goodman had, now has, or may claim to have had as of the date of execution of this Agreement, including, but not limited to, all claims and complaints arising out of or in any way related to the facts and circumstances in the Partnership Agreement and/or Bankruptcy Case. The foregoing release and covenant does not include any legal action necessary to enforce or protect the rights and duties created by this Agreement.

Except for the performance of the obligations contained in this Agreement, DAG forever releases and covenants not to sue Mothershead, Goodman, and/or any of their past, present, and future, agents, brokers, employees, employers, representatives, attorneys, beneficiaries, servants, partners, independent contractors, related entities, affiliate corporations or companies, executors, successors, predecessors-in-interest, administrators, and assigns, and all persons or entities claiming by, through, or under them, on any or all claims, actions, causes of action, suits, debts, sums of money, losses, interests, costs, receivables, expenses, sums of money, accounts, covenants, contracts, agreements, representations, warranties, damages, injuries, liabilities and demands whatsoever, in law, equity, arbitration, administrative proceeding or otherwise, whether known or unknown, direct or indirect, foreseen or unforeseen, contingent or fixed, liquidated or unliquidated, that DAG had, now has, or may claim to have had as of the date of execution of this Agreement including, but not limited to, all claims and complaints arising out of or in any way related to the facts and circumstances in the Partnership Agreement and/or Bankruptcy Case. The foregoing release and covenant does not include any legal action necessary to enforce or protect the rights and duties created by this Agreement.

The Settling Parties shall not defame or disparage, individually, or the business, services, officers, employees or representatives of Mothershead, Goodman, or DAG, or otherwise do anything to detract from or reflect adversely upon their reputation.

The Settling Parties acknowledge that they have entered into this Agreement in reliance on their own independent investigations and analysis of the facts and the law governing these actions and the claims asserted in them, and that no representations, warranties, or promises of any kind have been made, directly or indirectly, to induce any of them to execute this Agreement, other than those that are expressly set forth in this Agreement.

Integration and Understanding.

This Agreement contains the entire understanding between the Settling Parties with respect to the subject matter of the Agreement, and supersedes all prior and contemporaneous agreements and understandings, inducements or conditions, express or implied, oral or written, except as otherwise contained in the Agreement. The express terms of the Agreement control and supersede any course of performance inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing. If any provision of this Agreement, or the application thereof, is held invalid, any such invalidity shall not affect other provisions or applications of this Agreement.

Advice of Counsel.

The Settling Parties further acknowledge that each of them and counsel of their choosing have had an opportunity to review the Agreement, that the terms of the Agreement have been completely read by them and that they have had the opportunity to have the terms explained to them, that the terms are fully understood and voluntarily accepted by them, and that the Agreement will not be construed against any party merely because such party prepared it. This Agreement shall be construed without regard to the drafter of the Agreement and shall be construed as though the undersigned hereto participated equally in the drafting of the Agreement.

Compromise.

The Settling Parties understand and agree that the provisions set forth in the Agreement for consideration, release, and discharge are not to be construed as admissions of liability on the part of any party to the Agreement, all liability being expressly denied, but such provisions are made solely in compromise and settlement.

Binding Nature of Agreement.

This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective agents, shareholders, officers, directors, employees, successors, representatives, heirs, and assigns.

Warranty of Capacity to Sign.

Each person executing the Agreement hereby represents and warrants that he or she is duly authorized either as Assignee, Assignor, or as a representative of the party for which he or she acts and is fully and legally empowered to execute and deliver this document on behalf of the party for which he or she acts.

Notices.

All notices required to be given under this Agreement shall be in writing and either served personally or by U.S. Mail, postage prepaid, certified return receipt requested, and addressed to the Settling Parties as follows or to such other email address as specified in written notice provided hereunder:

To Mothershead:

Karen Mothershead
9221 N. 59th Ave. #217
Glendale, AZ 85302
Or karenmothershead@gmail.com

To Goodman:

Grant Goodman
3104 E. Camelback Rd. #563
Phoenix, AZ 85016
Or granthgoodman@msn.com

To DAG:

Aslam Dulara
4602 E. Carolina Dr.
Phoenix, AZ 85032
or aslamdulara@msn.com

Copy to:

Olga Zlotnik
Law Offices of Olga Zlotnik, PLLC
7047 E. Greenway Parkway, Suite 250
Scottsdale, AZ 85254 (if not allowed to withdraw)
Or to new counsel as approved by the Court
Or oazlotnik@gmail.com

Execution of Multiple Counterparts.

The Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument. The Settling Parties agree that, upon execution, the counterparts of the Agreement may be delivered by facsimile or electronically by email, with the original counterpart to be promptly delivered.

Enforcement of Agreement.

If any action shall be brought to recover any amount under the Agreement before or on account of any default or breach of, or to enforce any of the obligations, terms, covenants or conditions of the Agreement, the prevailing party or parties shall be entitled to recover from the other parties all of their costs and reasonable attorneys' fees. The Assignee shall recover all costs, expense, damage under the prior terms [See, C-(1)(2)(3)], expert and consulting fees, expense of suit, sanctions, research and chargeable time and effort, all recoverable *Pro se* under the Assignment Agreements. To the extent Assignee must set forth an hourly basis for damage, sanction, or expense analysis, Goodman is entitled to $550.00 an hour.

Captions.

The paragraph captions set forth in the Agreement are for the convenience of the Settling Parties and do not modify, limit, or otherwise affect the express provisions of the Agreement.

Governing Law.

The Agreement and all questions relating to its validity, interpretation, performance, and enforcement shall be governed by and construed in accordance with the laws of the State of Arizona, or where required, Federal Law of the Ninth Circuit.

GRANT GOODMAN

/s/Grant H. Goodman ____________ 7.28.2015
DATE

DULARA AUTOMOTIVE GROUP, LLC

______________________________ ____________
DATE

By______________________________
Its______________________________

Approved as to content: ______________________________
DIP Counsel